

TESTIMONY OF ROBERT NELSON ON BEHALF OF  
THE HEAT AND WARMTH FUND

Chairman Horn, Vice-Chairman Shirkey, members of the committee, my name is Robert Nelson. I am currently an attorney representing THAW, but I was a member of the MPSC when the LIEEF program was created and during the first three years of its administration by the Commission. I wish to supplement the testimony of THAW's CEO, Susan Sherer, by detailing the history of the program, why it was created and why it was challenged. Since I prepared and filed an amicus curiae brief with the Michigan Supreme Court on behalf of THAW and five other parties, I will also discuss the current status of the lawsuit brought by the Attorney General and ABATE.

This state has dealt with the impact of rising energy costs on our most vulnerable citizens since the energy crisis of the 1970s. Following the Arab oil embargo, the Commission adopted an emergency rule to ensure that customers of the utilities who could not afford to pay for the increased energy costs could avoid being shutoff in the middle of the winter. In 1982, the Commission adopted the Winter Protection Rule as part of the Energy Assurance Plan, which contained legislative and regulatory approaches to the problem. Although not a perfect solution to the dilemma faced by an increasing number of customers, the EAP did help thousands of them find a way to keep the heat and lights on. The

Winter Protection Rule however, resulted in many customers deferring payments on their utility bills until the spring and arrearages began to rise dramatically.

By 2000, the Commission realized that the flaws in the Winter Protection Rule were such that additional solutions were required. By including the creation of LIEEF in Act 141 of 2000, the Legislature was, in my view, attempting to balance the benefits to the utilities (recovery of stranded costs, securitization) and the larger customers (customer choice) with benefits to those who were unable to pay their bills. The LIEEF was created and resulted in more than \$650,000,000 being granted to more than 45 recipients in the nearly ten years of its existence. More than 2/3rds of this amount was distributed to agencies like THAW for the direct assistance to customers for the payment of gas and electric bills. By distributing the money to a number of agencies, the Commission was able to ensure that innovative approaches to these assistance programs were developed. Susan has described some of these innovations in her testimony.

LIEEF was originally funded through the proceeds from the securitization filings of the two major utilities. When the securitization proceeds were exhausted, the Commission decided to continue the program, believing that was the intent of the Legislature. I was on the Commission when that decision was made. ABATE and the Attorney General challenged the decision in court and on two separate occasions, the Court of Appeals sustained the Commission's judgment that it could fund the program through general utility rates. Even after the Legislature

enacted Act 286 in 2008 and removed all references to securitization, the Legislature continued to appropriate money for the program and, in 2009, created a new funding source for LIEEF.

In its filing with the Michigan Supreme Court, THAW has asserted that it and other agencies reasonably relied on the promises of state government for continued operation of LIEEF and at the very least, the grants that were approved by the Commission BEFORE the decision of the Court of Appeals in July should be carried out. The case is still awaiting the Supreme Court's ruling on whether to grant leave to appeal the decision. THAW believes that the Legislature should honor these promises by enacting legislation for the purpose of allowing agencies to use the funds that have previously been granted to them to provide critically-needed assistance to low-income customers this winter.

Thank you for your consideration of these comments.